

PRE-FINAL DRAFT

AMENDMENT TWO TO THE MEMORANDUM OF AGREEMENT

Among the
ADVISORY COUNCIL ON HISTORIC PRESERVATION
FEDERAL HIGHWAY ADMINISTRATION
AND THE
HAWAII STATE HISTORIC PRESERVATION OFFICER

Regarding the projects in the vicinity of the
District of North Kona, Island of Hawaii, State of Hawaii
which are known as the Queen Kaʻahumanu Highway Intersection
Improvements for the Kaloko-Honokōhau National Historic Park
and the Queen Kaʻahumanu Highway Widening, Kailua to Keʻāhole

WHEREAS, the Memorandum of Agreement (MOA) regarding the projects known as Queen Kaʻahumanu Highway Intersection Improvements for the Kaloko-Honokōhau National Historic Park, and the Queen Kaʻahumanu Highway Widening, Kailua to Keʻāhole (collectively the “Projects”) was executed on March 17, 2015; and

WHEREAS, several stipulations of the MOA were delayed or not completed (summarized in Attachment 1); and

WHEREAS, Amendment One to the MOA was executed on March 5, 2020 to address changes to the Area of Potential Effect (APE) (Stipulation 2), Interpretive Signs (Stipulation 11), and document the adverse effect for trails damaged during construction. It also extended the term of the MOA to March 17, 2021 to allow time to consult on mitigation for the adverse effect; and

WHEREAS, relevant history of consultation on the APE, Supplemental Archaeological Inventory Survey (SAIS), Damage to Sites and Buffer Breaches, Amendment One and Amendment Two is summarized in Attachment 2; and

WHEREAS, Hawaii Department of Transportation (HDOT) needs more time to implement the cultural programs at the University of Hawaii at Hilo (UHH). In addition, Makani Hou O Kaloko-Honokōhau (Makani Hou) requested to be consulted on implementation of the cultural programs and met with the UHH on November 6, 2020; and

WHEREAS, the FHWA and HDOT submitted an after-action analysis scope and schedule as required by Stipulation 26 on May 7, 2020 and FHWA submitted the final after-action analysis report to consulting parties on January 29, 2021 (Attachment 3).

NOW THEREFORE, in furtherance of the above recitals, the Federal Highway Administration (FHWA), the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), the National Park Service, and HDOT agree that the Projects shall be implemented in accordance with the following amended stipulations in order to take into account the Project’s effect on historic properties:

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1. **Stipulation 5.B** of the MOA shall be replaced with the following text:

NATIVE HAWAIIAN CULTURAL OUTREACH AND EDUCATION. The HDOT and the University of Hawaii at Hilo (UHH) have entered into a Memorandum of Understanding (MOU) to provide cultural programs and education to support Native Hawaiian Studies (See Attachment 4, UHH MOU, 2019). The FHWA and HDOT shall ensure that the MOU between HDOT and UHH to provide cultural programs is fully implemented over the duration of the MOU. The MOU includes the Kohala Center, as requested by Makani Hou, to help facilitate the contract and to provide a mechanism to better include local representation. UHH will provide annual reports documenting the activities of the past calendar year. HDOT will make the reports available to all consulting parties. If any activities were not accomplished, UHH will so note, including reasons goals were not met. HDOT and the CPs shall consult with UH on alternative timeframes and means to meet the goals of this stipulation, if the activities could not be accomplished. FHWA will continue to report annual progress of Stipulation 5.B as required in Stipulation 19- MONITORING AND REPORTING of the 2015 MOA. By March 31, 2021, the HDOT and the UHH shall provide a timeline for the delivery of the first year of the five project areas of the MOU. The timeline will be distributed to consulting parties. Future timelines will be developed by UHH and HDOT annually to accommodate any need changes to tasks or schedule.

2. **Stipulation 18** of the MOA shall be replaced with the following text:

DISPUTE RESOLUTION. Should any signatory, invited signatory, or consulting party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the objecting party shall submit its objection in writing to both the Hawaii Division Administrator and the Federal Preservation Officer for FHWA, and also notify all Consulting Parties. Both officials of FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

- A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The FHWA will then proceed according to its final decision.
- B. Make a final decision on the dispute and proceed accordingly if the ACHP does not provide its advice regarding the dispute within the thirty (30) daytime period. Prior to reaching such a final decision, the FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provides them and the ACHP with a copy of such written response.

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C. Be responsible to carry out all other actions, subject to the terms of the MOA that are not the subject of the dispute.

3. **Stipulation 20** of the MOA shall be replaced with the following text:

DURATION. The original term of the MOA was for five (5) years from the execution of the MOA with the original term ending March 17, 2020. Amendment 1 extended by a period of one (1) year from the March 17, 2020 expiration of the MOA to March 17, 2021. The MOA duration is extended by this Amendment 2 for a period of five (5) years from the March 17, 2021 expiration to March 17, 2026, or upon completion of the stipulations, whichever comes first.

4. **Stipulation 27** shall be added to the MOA:

A. PRESERVE 2,500 FEET OF THE MĀMALAHOA TRAIL (SIHP #50-10-27-00002).

1. IDENTIFICATION

HDOT shall perform vegetation clearing and preservation activities meeting the Secretary of Interior's (SOI) guidelines and Hawaii Administrative Rules (HAR) 13-277 for preservation for a 2,500-foot portion of the Māmalahoa Trail (SIHP #50-10-27-00002) within its right of way in the area from Kealahou Parkway south, per the State requirements for a Preservation Plan (PP) outlined below.

2. BUFFER ZONES

HDOT will establish 30-foot buffer zones around the trail. These buffer zones will be depicted on a map using GIS points to locate the buffer. The map shall be of sufficient scale that the trail and buffers can be clearly seen. An archaeologist will draw the buffer along with the trail. Interpretive signs may be placed in the buffer zones, but no additional work or activities will take place in the buffer area without permission from HDOT. Should anyone request to place a permanent marker in the buffer, HDOT will consult with CPs on the appropriateness of the request. HDOT will make contact by e-mail and a follow up contact by phone if there is no e-mail response. At the end of this MOA, HDOT will use its discretion on whether or not to contact CPs regarding requests to place permanent markers in the buffer.

3. CONSULTATION PROCESS

HDOT shall consult with Native Hawaiian Organizations (NHOs) and Consulting Parties (CP) to this amendment during the development of the PP as follows:

- a. To solicit participants to consult on the development of the PP, HDOT shall contact NHOs and CPs via regular mail and via email. If no response is received, HDOT will follow up via phone if a phone number is available. HDOT encourages consulting parties to provide HDOT with information on additional parties to consult.

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- b. A timeline for the development of the PP and restoration of the trail will be developed as a part of the consultation. HDOT, with assistance of DLNR Na Ala Hele, commits to hiring a consultant, within one year of execution of this Amendment, sooner if possible.
- c. HDOT, with the assistance from DLNR Na Ala Hele, will conduct consultation meetings. An initial consultation meeting will be held to discuss the preservation plan and solicit ideas and comments. Up to two additional consultation meetings will be held as necessary. Meetings may be held via video conference if there are travel restrictions or if the Consulting Parties agree to video conferencing. HDOT shall provide electronic copies of the drafts for review to the CPs and NHOs who will have 30 days to provide comments to HDOT. Comments made during consultation or other, informal meetings and any written comments received from CPs and NHOs, will be considered when finalizing the PP.
- d. The final PP will be provided electronically to the NHOs and CPs, unless a paper copy is requested
- e. The final PP shall include a list of individuals and organizations consulted and shall summarize their input.

4. PRESERVATION MEASURES

- HDOT will rehabilitate, restore or reconstruct (as appropriate) the 2,500-foot segment of the Māmalahoa trail identified in the map (Attachment 5) meeting SOI guidelines and HAR 13-277. The Preservation Plan (PP) will include the following:
- a. A synthesis of available documentation on the construction, uses, maintenance, vegetation and stories of the Māmalahoa Trail in the Kealakehe and Honokōhau ahupua'a. The SHPD library, the State Archives and the Hawaiian collection at the Hamilton Library will be searched (if accessible¹,) for documentation. Oral history collections talking about these two ahupua'a should also be accessed, if available. The synthesis need not capture the entire Māmalahoa Trail.
 - b. Archeological documentation, including drawings of the existing condition of the Māmalahoa Trail (after vegetation clearing) and identification of intersections with other historic trails within the 2,500-foot section, as well as the small piece of trail on the other side of Kealakehe Parkway. Archaeologist will GPS the location of the trail(s) using standard archaeological practices. The PP will also include religious and/or cultural significance of the trail.
 - c. A vegetation clearing plan for the 2,500 section of trail.

¹The upper floors of Hamilton library are currently closed due to COVID-19 (December 2020).

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- d. A maintenance plan for this section of the trail, which will include access, litter control, future impacts and site stability and periodic monitoring of the site for impacts to historic integrity and site significance, and protocols for the State Historic Preservation Division (SHPD) inspections.
- e. HDOT shall develop a paved parking lot with room for ten cars and one bus in its right of way. The parking lot shall meet Americans with Disabilities Act accessibility requirements and have a paved driveway to exit and re-enter the Kealahou Parkway.
- f. Interpretation of the site. This will include recognition of the connection of the trail to the North side of Kealahou Parkway and mauka-makai trails within this 2,500-segment. This could be done through signage or other means. Na Ala Hele and consulting parties will be invited to consult on the interpretation of the site. Interpretive signs, brochures, or other materials will follow HAR 13-277-7, including getting SHPD approval for any interpretive material.
- g. A plan for permanent markers to identify and interpret the trail such as trail markers, signs or dry-land native vegetation.
- h. The PP will include revised Preservation Plans for the Māmalahua Trail (SIHP #50-10-27-00002) near the park entrance and Road to the Sea (also known as Trail to Kohalaiki) (SIHP #50-10-27-10714), and will document their current condition within the APE.
- i. The PP will include a report on the buffer breaches and note that the buffers for SIHP #'s 50-10-27-19947, -28783 and -28811 will remain the same.

B. Preservation Plan (PP) Submittals to SHPD

- 1. HDOT shall submit the pre-final PP to SHPD for their review and comment. SHPD shall have 30 days to provide comment unless they request more time in writing, including e-mail.
- 2. HDOT will address all SHPD comments received within 30 days and submit a final PP for SHPD's written concurrence. SHPD shall respond within 30 days unless it requests additional time in writing. If SHPD does not respond, the HDOT may assume SHPD's concurrence

C. Once HDOT receives SHPD's written concurrence HDOT will implement the plan to preserve the trail.

D. The section of the Māmalahua Trail discussed above is considered a public Trail under the Highways Act of 1892. As such, it is already under the jurisdiction of the State Board of Land and Natural Resources. At such time when it is feasible for both parties,

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190 HDOT shall formally transfer the trail, including maintenance, parking, any structures
191 erected to interpret the trail and any documentation related to the DLNR Na Ala Hele
192 Program.

193 5. This Amendment may be executed in counterparts. Each signature page shall be incorporated
194 into Amendment Two and considered a part of this Amendment.
195

196 List of Attachments:

- 197 1. MOA Stipulation Status
- 198 2. History of Consultation Status
- 199 3. After-Action Analysis Report
- 200 4. UHH MOU
- 201 5. Map of the 2,500 feet of trail.
- 202 6. SOI Guidelines
- 203

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which are known as the Queen Ka‘ahumanu Highway Intersection
Improvements for the Kaloko-Honokōhau National Historic Park
and the Queen Ka‘ahumanu Highway Widening, Kailua to Ke‘āhole

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date:

John M. Fowler, Executive Director

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SIGNATORY:

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

Ralph J. Rizzo, Division Administrator

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SIGNATORY:

STATE HISTORIC PRESERVATION OFFICER (State of Hawai‘i)

By: _____ Date: _____

Suzanne D. Case, State of Hawai‘i Historic Preservation Officer

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INVITED SIGNATORY:

NATIONAL PARK SERVICE

By: _____ Date: _____

John Broward, Superintendent, Kaloko-Honokōhau National Historical Park

By: _____ Date: _____

Aric Arakaki, Superintendent, Ala Kahakai National Historical Trail

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INVITED SIGNATORY:

STATE OF HAWAI‘I DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Jade T. Butay, Director of Transportation

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CONCURRING PARTY:

HISTORIC HAWAI‘I FOUNDATION

By: _____ Date: _____

Kiersten Faulkner, Executive Director

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CONCURRING PARTY:

OFFICE OF HAWAIIAN AFFAIRS

By: _____ Date: _____

Sylvia Hussey, Ka Pouhana Kūkawā / Chief Executive Officer

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CONCURRING PARTY:

MAKANI HOU O KALOKO-HONOKŌHAU

By: _____ Date: _____
Fred Cachola, President